

IN THE MATTER OF  
THE MORTGAGE ORIGINATOR  
LICENSE OF DAVID G. LINCOLN

\* BEFORE THE MARYLAND  
\* COMMISSIONER OF  
\* FINANCIAL REGULATION  
\* Case No. DFR-EU-2007-135  
\*

\* \* \* \* \*

**STATEMENT OF THE CASE**

The hearing in the above-captioned matter was held on May 1, 2008, and was heard by Deputy Commissioner of Financial Regulation, Mark Kaufman (the "Deputy Commissioner"). The matter was scheduled for a hearing as a result of a charge letter issued by the Office of the Commissioner of Financial Regulation, alleging violations of law by David G. Lincoln ("Respondent"). The specific alleged violations of law were: (1) Md. Code Ann., Financial Institutions Article ("FI") § 11-615(a)(3)(i) and (ii) by engaging in a mortgage fraud scheme that resulted in Respondent pleading guilty in federal court to wire fraud under 18 U.S.C. § 1343; and (2) FI § 11-615(a)(5) by demonstrating unworthiness, bad faith, dishonesty, and other qualities that indicate his mortgage origination business has not been or will not be conducted honestly by engaging in the mortgage-related fraud. [Comm'r Exhibit #4 ].

Respondent was advised by written notice of the allegations against him and further advised that, if found in violation, he is subject to suspension or revocation of his mortgage originator license; an order to cease and desist from the violation and any similar violations, including restitution of money or property; and/or the imposition of a civil penalty not exceeding \$1,000.00 for each violation. [Comm'r Exhibit #4 ].

Respondent did not appear, but proper service of the notice of the hearing being established, the hearing proceeded pursuant to COMAR 09.01.02.09. Matthew A. Lawrence, Assistant Attorney General, appeared as the presenter of evidence on behalf of

the Office of the Commissioner. Christopher J. Young, Assistant Attorney General served as counsel to the Deputy Commissioner. The proceedings were electronically recorded.

### **FINDINGS OF FACT**

From the testimony and exhibits presented, and with the opportunity to observe the demeanor of the witnesses and to assess their credibility, the Deputy Commissioner finds the relevant facts to be these:

1. Respondent, at all times relevant to the charges brought in this case, was licensed by the Office of the Commissioner of Financial Regulation as a mortgage originator pursuant to FI § 11-601 *et seq.*
2. Respondent was sent the notice of hearing dated February 26, 2008 (the "Hearing Notice") at his address at 4902 Pilgrim Road, Baltimore, MD 21214 via regular mail and certified mail, return receipt requested. This is the address of Respondent on record with the Office of the Commissioner. [Comm'r Exhibit # 1, 2 and 4].
3. Respondent did not claim the Hearing Notice sent to him via certified mail, return receipt requested, but the Hearing Notice sent regular mail was not returned to the Office of the Commissioner. [Comm'r Exhibit #2 and 3].
4. On or about July 30, 2007, Respondent plead guilty in the case of *United States v. David Lincoln*, Criminal Case No. 07-0349, United States District Court for the District of Maryland, to one count of wire fraud, 18 U.S.C. § 1343 and Aiding and Abetting, 18 U.S.C. § 2. Respondent's guilty plea is evidenced by the criminal Information in the same case dated August 1, 2007, and the stipulations and plea

agreement signed by Respondent dated July 30, 2007 attached thereto. [Comm'r Exhibit #6].

5. In his stipulation, Respondent admitted that "[b]eginning in or about January 2005, and continuing until in or about March 2007, in the District of Maryland and elsewhere, the Defendant David Lincoln did knowingly and willfully devise a scheme and artifice to defraud and to obtain mortgages by means of materially false and fraudulent pretenses, representations and promises." [Comm'r Exhibit #6].

6. As part of his scheme to defraud, Respondent worked with other persons to prepare fraudulent mortgage applications which contained false representations about the income and employment of the applicants. The fraud scheme allowed these persons to obtain loans to purchase four properties with values of \$1,025,000, \$500,00 \$316,000, and \$300,000, respectively. [Comm'r Exhibit #6].

5. As part of Respondent's plea agreement, Respondent agreed that he will pay restitution in an amount to be determined by the Court, not to exceed \$200,000.00. [Comm'r Exhibit #6].

7. Stephen Prozeralik, Director of Enforcement, Office of the Commissioner of Financial Regulation, testified that he personally verified with the District Court that on April 28, 2008, Respondent was convicted and sentenced in the case of *United States v. David Lincoln*, Criminal Case No. 07-0349, United States District Court for the District of Maryland.

#### **CONCLUSIONS OF LAW**

Based on the Findings of Fact, the Deputy Commissioner concludes that Respondent has violated FI § 11-615(a)(3)(i) and (ii) by engaging in fraud in connection

with mortgage loan and loan application transactions. The Deputy Commissioner further concludes that Respondent, by engaging in this fraud, violated FI § 11-615(a)(5) by demonstrating unworthiness, bad faith, dishonesty, and other qualities that indicate his mortgage origination business has not been or will not be conducted honestly. Additionally, the Deputy Commissioner concludes that Respondent was properly served with the Hearing Notice.

As to the Hearing Notice, Pursuant to COMAR 09.01.02.07 (2), the Office of the Commissioner may effect service of a notice (including a hearing notice) by mailing a copy of the document, first class, postage prepaid, to the person's last known business or home address. In considering the sufficiency of service, the Court of Appeals has held that:

[t]he constitutionality of a particular notice mechanism is not to be judged by its actual success—whether an individual or group is in fact notified—but turns instead on whether the chosen method is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

*Golden Sands Club v. Waller*, 313 Md. 484, 500 (1988).

In the instant case, the evidence supports that the notice of hearing was sent in conformity with the law and in a manner reasonably calculated under the circumstances to apprise Respondent of the hearing and afford him the opportunity to present his case and defend himself. Accordingly, the Deputy Commissioner concludes that Respondent received proper notice of the hearing.

As to the substance of the instant case, it is difficult to imagine a more serious violation of law than mortgage fraud in relation to Respondent's Maryland mortgage originator licensee. The actions that Respondent has admitted to in his plea agreement

are most egregious—namely sending financial institutions mortgage loan applications that contained grossly inflated income amounts and false employment information for the borrowers. This was information that Respondent "knew was false and fraudulent." [Comm'r Exhibit #6]. This fraud by Respondent could not be more related to the mortgage origination business.

Mortgage fraud of the type that Respondent engaged in is not only extremely serious, but the fact that Respondent failed to appear at his hearing and participate in the proceedings shows his utter lack of good faith. Mortgage fraud also has a deleterious effect on the public and the mortgage industry. It permits a borrower who cannot afford a loan to obtain it, thereby risking default and foreclosure. It causes large monetary losses to the lenders who are the victims of the fraud. And it harms the public generally by potentially increasing the cost of credit because the cost of fraud, like other business costs, are passed along to borrowers.

The Deputy Commissioner concludes that the public interest would not be served by allowing Respondent to continue operating as a mortgage originator in this State.

#### **FINAL ORDER**

In consideration of the Findings of Fact and Conclusions of Law, it is this 5<sup>th</sup> day of May, 2008, hereby **ORDERED** that:

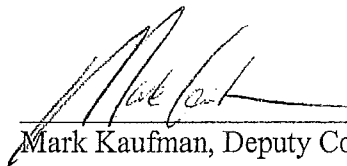
The mortgage originator license of Respondent, David G. Lincoln, shall be and hereby is immediately **REVOKED** pursuant to FI § 11-615(a); and it is further

**ORDERED** that Respondent shall pay to the Commissioner of Financial Regulation a civil penalty in the amount of **\$1,000.00** within thirty (30) days of the date of this Final Order.

Pursuant to Md. Code Ann., State Government Article § 10-222, any party who is aggrieved by the Commissioner's decision, may file a petition for judicial review with the Circuit Court for the county where any party resides or has a principal place of business. Such petition must be filed within thirty (30) days after Respondent's receipt of this Order (Md. Rule 7-203). The filing of a petition for judicial review does not automatically stay the enforcement of the Final Order.

**COMMISSIONER OF FINANCIAL REGULATION**

By:

A handwritten signature in black ink, appearing to read "Mark Kaufman", is written over a horizontal line.

Mark Kaufman, Deputy Commissioner